Supreme Court, U.S.
FILED

051531 APR 22 2006

OFFICE OF THE CLERK

Docket No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

JORDAN YEE, MD, (Yee) Plaintiff - Appellant,
V.
UNITED STATES OF AMERICA; JOHN ASHCROFT, U S ATTORNEY GENERAL (Agency)
Defendants - Appellees,

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit (Appellate Court)

PETITION FOR WRIT OF CERTIORARI TO REVERSE APPELLATE COURT'S ORDER TO DISMISS APPEAL IN DISTRICT COURT'S DECISION MADE WITHOUT JURISDICTION

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QUESTION PRESENTED FOR REVIEW

1. Whether the District Court (United State District Court for the Northern District of Texas, Fort Worth Division) was confused and erroneously dismissed Yee's Equal Employment Opportunity (EEO) Case No. P990020, without proper jurisdiction, while the EEO Case No. P990020. is still processing through administrative proceedings. The Appellate Court, Fifth Circuit, Judges were KING, DeMOSS, and PRADO, Docket No. 05-11246. The relevant instant case is the Civil Action 4:03-CV-1457-Y in Appendix D.

2. Whether Yee should be allowed to re-file on the other claims dismissed in Civil Action No. 4:03-CV-1457-Y (see Appendix B, FINAL JUDGMENT and ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, for detail), where new information from Yee's former supervisor, William Pederson, M.D., Yee's colleague Judith

Cherry, M.D.,and Renee McComas, R.N. supported that Yee was innocent of the false charges. The new revelation that no physician, nurse, or any person who worked on the medical/surgical inpatient unit on the fourth floor, would ever personally bring any written prescription to the pharmacy on the first floor, provide absolute proof that Yee's claims in Civil Action No. 4:03-CV-1457-Y are meritorious. Therefore, the Trazodone prescription (written in order set C, attachment No.4, Appendix I) which was claimed to be altered by Yee as alleged by James Teague, R.PH., were indeed was never altered by Yee or even seen or processed by any pharmacist, thus, proving that Yee is innocent of the false charges levied against him by the Agency, which stated that "Yee altered the said Trazodone prescription after James Teague, RPH had processed it." See Appendix I for detail on how Yee is pursuing new administrative proceedings to clear the false

charges against Yee.

OPINION BELOW

1. On February 2, 2006, the UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT, dismissed Yee's appeal, CASE N0. 05-11246, without providing any detail. Agency's motion to dismiss appeal was granted.

2. On July 26, 2004, the UNITED STATES DISTRICT COURT FOR THE NORTHERN DISTRICT OF TEXAS FORT WORTH DIVISION, dismissed with prejudice to their refiling, all claims in ACTION N0. 4:03-CV-1457-Y. An order granting Motion for Summary Judgment was issued at the same time. The District Court stated that:

> "Although Plaintiff's complaint is somewhat unclear regarding the exact nature of his Title VII claims, it appears that he contends he was subjected to retaliation as a result of "Prior EEO activity." The alleged retaliation included a charge that Plaintiff improperly altered a prescription, which

charge resulted in Plaintiff's being suspended without pay for one day, and alleged discriminatory actions inflicted on Plaintiff during the labor arbitration regarding this charge." On the issue of the August 26, 1997 incident, where Yee was gravely ill, ask to see his Physician, but the Agency interrogated Yee for "Sleeping on the Job" and this issue is currently being decided by Office of Federal Operations. The District Court wrote:

"As for the rest of Plaintiff's claims, the Court concludes that Plaintiff has failed to properly exhaust his administrative remedies."

"To the extent Plaintiff complains about having been questioned about falling asleep at work on August 26, 1997, and about defendant Teague's alleged discriminatory reporting of prescription irregularities, Plaintiff has wholly failed to demonstrate by competent summary-judgment evidence that he initiated EEO counseling regarding these matters in a timely fashion, nor has he presented admissible evidence tending to

Demonstrate that the doctrines of waive, estoppel, or equitable tolling operates to excuse his tardiness."

"To the extend Plaintiff complains about alleged discrimination in his labor arbitration, the Court concludes that his complaint is time barred. The EEOC issued its final decision regarding this complaint on August 14, 2003. Yee did not file this action, however, until December 15, 2003, well over the ninety-day limit contained in 42 U.S.C. § 2000e-16 c. As a result, his claim regarding discrimination in the labor arbitration is time barred."

CERTIFICATE OF INTERESTED PERSONS

Appellant, Yee is currently employed as a staff psychiatrist at Department of Justice, Bureau of Prisons, Federal Medical Center, Carswell. Mark Williams, Esq. is the attorney handling Yee's EEO Case No. P990020, related to the August 26, 1997 incident, which is erroneously dismissed by the District Court, without jurisdiction. Federal Medical Center Carswell (FMC), Management and John Ashcroft, U. S. Attorney General (Agency) are Appellees. These are persons interested in the outcome of the current WRIT OF CERTIORARI.

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APPENDIXES

The following list of Appendixes was mailed to the Agency on April 22, 2006 via certified mail and a return slip was received by Yee acknowledging the receipt of such documents. The Book Format does not allow proper reproduction of these appendixes, therefore, a summary is provided to highlight the contend of the appendixes.

A. Order from Appellate Court to dismiss appeal entered on February 2, 2006.

B. Final Judgement and Order Granting Motion For Summary Judgment by District Court entered on July 26, 2004.

C. A letter, from EEO Commission, Office of Federal Operations, granting Yee's request for reconsideration for EEO Case No. P990020, where a decision on Yee's case is still pending at the time of this instant Writ Of Certiorari filed on April 26, 2006.

D. Instant Case for the Writ of Certiorari, Civil Action No. 4:03-CV-1457-Y and relate back to Civil Action No. 4:03-CV-211-Y filed on March 24, 2003, where Yee met the two-year time allotted to pursue the violation of Yee's Due Process Right during the Labor Arbitration in June 26, 2002 between Yee's Union and

Agency. FMCS CASE NO. 02-00289.

E. Brief to Office of Federal Operations to reopen appeal for the EEO Case No. P990020.

F. Joint Exhibit for the Agency and Yee's Union during the Arbitration in 2002, FMCS CASE N0. 02-00289.

G. EEO Counselor, John Hartford's memorandum stating how Yee's request to file an EEO Complaint relating to the August 26, 1997 incident was ignored and delayed. John Hartford mistook Yee had left employment at the Agency, and he did not process Yee's EEO Complaint at the first contact. John Hartford restarted the EEO process again after Yee was well enough from his illness and contact John Hartford later.

H. Yee's eleven (11) letters from Yee's physicians certifying that Yee was gravely ill. Yee suffered a stroke, weakness of his right hand, major

depressive disorder from disability incurred from the Agency's interrogation while Yee was having a Hypertensive Crisis, a medical emergency. Yee was unable to work for twenty-two (22) months directly caused by the action of the Agency.

I. Yee's most recent EEO Complaint filed on February 24, 2006 with Donnie Boiles, EEO Counselor, Bureau of Prisons (Agency) after new information was discovered. William Pederson, M.D., Yee's supervisor at the time of the alleged alteration of the Trazodone Prescription by Yee had review evidence presented in Yee's Labor Arbitration of June 26, 2002 and provided statements to Donnie Boiles, EEO Counselor, that Yee is indeed innocent of the false charges levied against him by the Agency. Judith Cherry, M.D. and Renee McComas, R.N. were not allowed to testify for

Yee during the Labor Arbitration of June 26, 2002 and now provided statements to Donnie Boiles, EEO Counselor, to support Yee is innocent of the false charges levied against him by the Agency.

TABLE OF AUTHORITIES

U.S. CONSTITUTION, FEDERAL STATUE, U.S. CODE, SUPREME COURT AND FEDERAL CASES.

1. CONSTITUTION OF THE UNITED STATES OF AMERICA, FOURTEENTH AMENDMENT, DUE PROCESS CLAUSE.....p.4

2. 42 U.S.C. Section 1983 .....p.4

3. Wilson v. Garcia, 471 U.S. 261, 105 S. Ct. 193[illegible], 85 L.Ed.2d 254 (1985), 242, 243, 245 .....p.5

4. Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961).....p.5

5. Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123 (1988).....p.6

6. 29 C.F.R. § 1614.105 (2).....p.9

7. Fierro v. Cockrell, 294 F. 3d 674, 682 (5th Cir. 2002).....p.10

8. Felder v. Johnson, 204 F.3d 168, 174 (5th Cir. 2000).....p.10

STATEMENT OF JURISDICTION

The Supreme Court of the United States has supervisory power to review judicial jurisdiction questions in the District Court, which in turn was upheld by the Appellate Court.

On February 2, 2006, the Appellate Court upheld the decision of the District Court (see Appendix A for detail). On July 26, 2004, the District Court dismissed, with prejudice to their refilling, of all claims in Civil Action No. 4:03-CV-1457-Y (see Appendix B, FINAL JUDGMENT, for detail). One of the dismissed claims identified in the District Court's judgment was related to Appellant (Yee)'s EEO Case No. P990020, which involved

an incident of August 26, 1997 (see Appendix B, ORDER GRANTING MOTION FOR SUMMARY JUDGMENT, p.2 line 6) where Yee was gravely ill on August 26, 1997, struck with a medical emergency, the Agency's management falsely accused Yee of "sleeping on the Job," and proceeded to interrogate Yee, preventing Yee to seek medical help, Yee suffered a stroke with weakness of right hand, major depressive illness, and was unable to work for twenty-two (22) months. However, on July 26, 2004, when the District Court dismissed the EEO Case No. P990020, this EEO case was still under consideration by the Office of Federal Operations of the EEO Commission, as indicated on the Request For Reconsideration granted, dated January 30, 2006 (see Appendix C for detail). Yee merely mentioned the EEO Case No. P990020 to satisfy the prerequisite of filing the Civil Action

4:03-CV-1457-Y against the Agency for retaliation for Yee's previous EEO activity related to the August 26, 1997(EEO Case No. P990020). The Civil Action 4:03-CV-1457-Y did not make a claim to requested the District Court to decide any issues related to the EEO Case No. P990020. Instead, Yee claimed that the Agency retaliated against Yee, because of previous EEO activity related to the EEO Case No. P990020. Yee asked the District Court to decide whether Yee was railroaded into disciplinary action stemming from the false charge of altering a Trazodone prescription after it was processed by the FMC Pharmacy, see Appendix F, Joint Exhibit for the Agency and Yee's Union during the Arbitration FMCS CASE N0. 02-00289, for more detail. The Civil Action 4:03-CV-1457-Y in Appendix D only claim the issues raised in Appendix F.

STATEMENT OF FACTS AND ARGUMENTS

A. Yee's EEO case is meritorious and is pending a decision from the Office of Federal Operations (OFO). Mark Williams, Esq. submitted a brief to reopen EEO Case No. P990020. See Appendix E for detail.

Excerpts from Mark Williams, Esq.'s Argument to OFO

The causation of the two civil actions (4:03-CV-211-Y and 4:03-CV-1457-Y) is due to the Agency's denial of Yee's right, protected by the U. S. Constitution, Fourteenth Amendment, Due Process right clause, during the Union and FMC management Labor Arbitration in 2002, Arbitration FMCS CASE N0. 02-00289 (2002 Arbitration). The remedy sought by Yee is available under 42 U.S.C. Section 1983 (Section 1983). Yee filed the civil action No. 4:03-CV-211-Y within the statue of limitation

(two years) from the date of the 2002 arbitration. Wilson v. Garcia, 471 U.S. 261, 105 S. Ct. 1938, 85 L.Ed.2d 254 (1985), 242, 243, 245 where it states that the Statue of Limitation for Section 1983 type of remedy fashions after Tort Law of the State where Yee filed its civil action, which is the State of Texas, and it allows a period of two-year to pursue remedy under Tort. The Supreme Court rules that no exhaustion of administrative process is required in order to seek remedy under Section 1983. See Monroe v. Pape, 365 U.S. 167, 81 S.Ct. 473, 5 L.Ed.2d 492 (1961), where Justice Stewart and Harlan, in their Monroe concurrence point out that, "Any possible overlap between the interests that tort law protected and the interests that the Constitution protected would be fortuitous." There is no requirement to serve "Notice of

Claim" as a precondition to seek a Section 1983 remedy in the District Court. See Felder v. Casey, 487 U.S. 131, 108 S.Ct. 2302, 101 L.Ed.2d 123 (1988).

The Supreme Court authoritatively separates Tort Claim from Constitutional and Civil Right violation, and also from Administrative proceedings involving the OFO. Therefore, the District Court cannot dismiss the EEO Case No. P990020, while it is still in administrative proceeding stages. Yee's retaliation claim is a Civil Right violation (4:03-CV-1457-Y), not related to the OFO proceedings. The District Court simply has no jurisdiction over the EEO Case No. P990020.

B. Subsequently, a letter from the Office of Federal Operations dated January 30, 2006 was issued and cleared docketed Yee's EEO case for

reconsideration as 05A60361. See Appendix C for detail. The District Court's decision, erroneously, links the August 26, 1997 incident to the Civil actions of Constitutional and Civil Right Violation. In fact, the Civil action No. 4:03-CV-211-Y (see Appendix D for detail), where Yee has raised the Due Process right violation by the Agency during the "2002 Arbitration" is clearly a Constitutional question, which cannot be mixed with Labor administrative proceedings of the August 26, 1997 incident.

C. Yee's EEO case is pursued by Mark Williams, Esq. who has not filed any Civil action related to the EEO Case No. P990020 before the District Court.

D. Yee's EEO Case No. P990020 is timely initiated and the process was prolonged due to Yee's grave illness. Yee has contacted Yee's Union representative, Torii Dawdy shortly after the August 26, 1997 incident, and Torii Dawdy, in turn contacted John Hartford, Agency's EEO counselor, within 45 days, but the EEO counselor, John Hartford, mistook that Yee had left employment from FMC and did not follow through with the EEO process. John Hartford sent a letter to Jacqueline M. Morgan at Office of General Counsel, EEO Office of the Agency, stating this fact, See Appendix G, page.1 for detail. Yee did not present, Appendix G, to the District Court because Yee did not make any claim or ask the District Court to decide on the EEO Case No. P990020.

Yee was gravely ill and when Yee was capable, Yee contacted John Hartford to continue with the EEO process on September 8, 1998. See Appendix G, page 2 for detail. Yee was diligent in pursuing his EEO Complaint. When Yee was mentally and physically capable, he perfected an EEO Complaint. 29 C.F.R. § 1614.105 (2) allowed extended time in effecting an EEO complaint when the complainant is prevented to do so due to certain reasonable circumstances. Yee was not familiar with the EEO process at that time, Yee was gravely ill, and Yee was on extended sick leave preventing Yee from contacting an EEO counselor at FMC. Therefore, Yee's EEO complaint should not be time barred. Yee satisfied Equitable Tolling because Yee has satisfied the "rare and

exceptional circumstances," where Yee cannot effect an EEO Complaint until he was capable of doing so. Therefore, Yee should be able to preserve his EEO claim when strict application of the statue of limitations would be inequitable. See Fierro v. Cockrell, 294 F. 3d 674, 682 (5th Cir. 2002). Yee's extended time in completing the EEO process outside of the statue of limitation was due to his grave illness, an external factor beyond Yee's control. See Felder v. Johnson, 204 F.3d 168, 174 (5th Cir. 2000). "Equitable tolling is appropriate when an extraordinary factor beyond the plaintiff's control prevents his filing on time." OFO has allowed Yee extended time to complete the EEO process and is now still considering Yee's EEO case.

E. Appendix H is eleven (11) letters from Yee's physicians certifying that Yee was gravely ill and FMC allowed Yee to go on sick leave for twenty-two (22) months after examining these eleven (11) letters. Yee did not present these eleven (11) letters to the District Court because Yee did not make any claim or ask the District Court to decide on the EEO Case No. P990020.

F. Appendix I, clearly, shows that Yee's claim, of being railroaded into the false charges of altering the Trazodone prescription (in Order Set C, attachment No.4), after it was processed by James Teague, R.PH. has merit. William Pederson, M.D., Yee's supervisor during the time of the false charges, recently, has made statements to declare Yee is, indeed, innocent

of the said charges to Donnie Boiles, EEO Counselor. Judith Cherry, M.D., Yee's colleagues, a staff psychiatrist at FMC during the time of the false charges, has seen the attachment No, 3,Order Set B, Computer printout, which shows that no prescription was processed after the Tylenol prescription for 90 days entry (the last prescription listed in Order Set B). If the alleged altered Trazodone prescription mention above was processed, it should be recorded on this Order Set B, Computer printout, right after the Tylenol prescription for 90 days. Since there is no such entry, therefore, the alleged altered Trazodone prescription mentioned above was not seen or processed by James Teague, R.PH. Renee McComas, R.N. made statement to support Yee's innocent of the said charges. Both Judith Cherry, M.D. and Renee McComas, R.N. were

not allowed to testify for Yee during the Labor Arbitration in 2002. Furthermore, Donnie Boiles, EEO Counselor, analyzed the evidence and agreed that it clearly supports that James Teague, RPH. received the order set B (attachment No. 8, in Appendix I) and processed it, because it is the only way that an entry of the Tylenol prescription for 90 days will be shown as it is on the Order Set B, Computer printout. James Teague, R.PH. did not receive the order set C (attachment No. 4, in Appendix I) from Yee.

According to Title 29 CFR, Chapter XIV, part 1614.105 (2), Yee can file an EEO Complaint at the time, when new information supporting a discriminatory matter was discovered.

CONCLUSION

1. The District Court erroneously dismissed Yee's EEO Case No. P990020 without any claim being filed on this issue. The District Court did not have jurisdiction to dismiss the EEO Case No. P990020.

2. Yee met the two years time allotted to pursue any Due Process Right violations during the Labor Arbitration of 2002. The District Court erroneously used the administrative time allotment of ninety (90) days instead of the correct time allotment of two (2) years, according to the decision made by the Supreme Court for Due Process Violations.

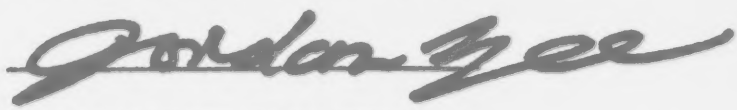
3. Yee has discovered new evidence to support that he is innocent of the two false charges levied against him by the Agency. Yee should be able to refile the claims contained in Civil action No. 4:03-CV-211-

Y after exhaustion of the current administrative process initiated in February 24, 2006.

Prayer

WHEREFORE, PREMISES CONSIDERED, Yee respectfully requests the Supreme Court to allow the Office of Federal Operations to make the decision on Yee's EEO Case No. P990020, stemming from the August 26, 1997 incident, and reverse the dismissal of EEO Case No. P990020. Yee also requests to refile a Civil Action on the issues stated in Appendix F, if further administrative proceeding cannot resolve Yee's claims detailed in Civil action No. 4:03-CV-211-Y

RESPECTFULLY SUBMITTED



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CERTIFICATE OF SERVICE

This is to certify that a copy of the forgoing Appeal Brief, was served by certified mail with a return slip requested, on this 22ND Day of May 2006, on the followings: Charles O. Dobbs, Assistant United States Attorney, Burnett Plaza, Suite 1700, 801 Cherry Street, Unit 4, Fort Worth, Texas 76102-6882 and Solicitor General of the United States, Room 5614 Department of Justice, 950 Pennsylvania Avenue, N.W. Washington, DC 20530-0001

The original Appeal Brief and ten (10) copies were also mailed to THE SUPREME COURT OF THE UNITED STATES

JORDAN YEE, M.D. PRO SE

CERTIFICATE OF COMPLIANCE WITH Rule 33 BOOK FORMAT

1. This brief complies with the type-volume

limitation of Supreme Court Rule 33 because this brief contains less than the maximum allowable total pages.

2. This brief complies with the typeface and style requirement of Supreme Court Rule 33 because this brief has been prepared in proportionally spaced typeface using Word perfect 11, Time New Roman, 12 pt.

3. The undersigned understands a material misrepresentation in the certificate of compliance may result in the Court's striking a brief and imposing sanctions against the person signing the brief

Jordan Yee

JORDAN YEE, M.D. PRO SE
Dated: 5-22-2006

APPENDIXES

APPENDIX A

Seal: U.S. Court of Appeals, Filed, FEB 2 2006, CLERK.

IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT. No. 05-11246

MD JORDAN YEE, Plaintiff-Appellant

V.

UNITED STATES OF AMERICA; JOHN ASHCROFT, U.S. ATTORNEY GENERAL, Defendants - Appellees

Appeal from the United States District Court for the Northern District of Texas, Fort Worth.

Before KING, DeMOSS, and PRADO, Circuit Judges.

PER CURIAM:

IT IS ORDERED THAT appellee's motion to dismiss appeal is Granted.

IT IS FURTHER ORDERED that appellant's motion for production of document is Denied.

APPENDIX B

Seal: District Court Northern District of Texas, Filed, JUL 26 2004

CLERK, U.S. DISTRICT COURT.

NORTHERN DISTRICT OF TEXAS, FORT WORTH DIVISION.

JORDAN YEE, M.D. VS, JAMES TEAGUE, R. PH., ET AL.

ACTION NO. 4:O3-CV-1457-Y

FINAL JUDGMENT

In accordance with the order issued this same day and Federal Rule of Civil Procedure 58, It is hereby ORDERED, ADJUDGED, and DECREED that all claims are hereby DISMISSED WITH PREJUDICE to their refiling. TERRY R. MEANS, UNITED STATES DISTRICT JUDGE.

ORDER GRANTING MOTION FOR SUMMARY JUDGMENT

Pending before the Court is the government's Motion for Summary Judgment, which was filed in this cause on February 27, 2004.Plaintiff filed a response in opposition to the motion on Mach 26. After review of the foregoing documents and the applicable law, the Court concludes that the motion should be granted.

(Yee quoted the relevant text in the Opinion Below section on page iv, v, and vi. of this document, please refer to it)

APPENDIX C

EQUAL EMPLOYMENT OPPORTUNITY

COMMISSION, OFFICE OF FEDERAL OPERATIQNS,

P.O. BOX 19848,

WASHINGTON, D.C. 20036.

DATE: JAN 30, 2006

REQUEST FOR RECONSIDERATION

RE: Justice, Dept of, Docket #: 05A60361, Assoc #: 01a40766. Agency #1: P990020, Filed: 121905

Jordan Yee, P.O. Box 151343, Ft. Worth, TX.. 76108

Dear Mr. Yee:

Your request for reconsideration has been docketed and assigned the docket number listed above. Please refer to the docket number on all correspondence to this office. (Routine instructions are not typed.) If you have questions regarding the processing of this matter, please call the EEOC, Office of Federal Operations at (202) 663-4599 and ask to speak to the Attorney of the Week.

Sincerely, Robert J. Barnhart, Director, Compliance and Control Division, Office of Federal Operations.

cc: Justice, Dept of , Dir., EEO Staff, 1110 Vermont Ave. #620, Washington, DC 20530

APPENDIX D

IN THE UNITED STATES DISTRICT COURT

FOR THE NORTHERN DISTRICT OF TEXAS

Fort Worth Division

JORDAN YEE, M.D. Plaintiff

V.

James Teague, R. PH. John Ashcroft, Attorney General and UNITED STATES OF AMERICA Defendant

CIVIL ACTION NO. 4:03-CV-211-Y filed on March 24, 2003

COMPLAINT

Pursuant to 42 USC § 1983, its jurisdictional counterpart, 28 USC § 1343 (3) Yee is seeking remedy for the invasion of civil right during the negotiated grievance procedure between the American Federation of Government Employees, Local 1006 (the Union) and the Agency. The Arbitration transcripts showed only three pharmacists, a nurse manager, the Warden of Federal Medical Center, Carswell (Agency) to testify against Yee. Yee's requested witnesses, to testify for Yee's innocent of the alleged alteration of a Trazodone

prescription after it was processed by the Pharmacy, Judith Cherry, M.D. Staff Psychiatrist, and Renee McComas, R.N. Staff Nurse were not allowed to testify during the Arbitration proceedings. The Agency wrote memorandums to Yee's Union Representative, Torii Dawdy, to deny any access to medical records and electronic prescription records, so that Yee could not defend against the Agency's false charges.

Yee follows up with another Civil Action No. 4: 03-CV-1457-Y, claiming retaliation from the Agency because the Agency's action of denying Yee's Due Process during the Labor Arbitration is motivated by Yee's participation in a previous EEO activity stemming from an incident in August 26, 1997.

The requirements of a prima facie case of retaliation are met.

I. Yee participated in prior EEO activity when on August 26, 1997, Yee was subjected to

mental and physical stress from management of the Agency, when Yee suffered a medical emergency, Hypertensive Crisis. Yee suffered a stroke with weakness of the right hand, and major depressive illness. Yee was not able to work for twenty-two (22) months.

ii. Yee engaged in protected activity which is providing routine patient care and wrote the Trazodone prescription for a patient. Yee did not alter this Trazodone prescription after it was written contrary to the Agency's allegation.

iii. Yee suffered an adverse employment action. He was suspended for one day without pay. The integrity stigma creates an unfavorable condition when Yee applied for employment in other Federal establishments (Air Force, Army, Indian Health Service, Veterans Affair Medical Center, and Homeland

Security–Immigration and Custom Enforcement Psychiatrist position).

iv. There is a causal link between Yee's protected activity and the employment decision sufficient to raise an inference of retaliation. Yee was initially charged with" Alteration of a Medical Record" by the Agency, and later Yee was charged, in addition, "Giving Misleading statement during an official investigation." The Agency's investigation is a sham and prejudicial against Yee. The Agency further withheld the availability of the Medical Record of the patient (N. G.), whom the alleged Trazodone prescription was written for during the Arbitration process. The Agency only provided the Trazodone prescription for N.G. after it is sanitized with the patient's name blacken out, leaving only N.G.'s identification

number, for use to convict Yee during the Arbitration process. The other part of N.G.'s medical record was withheld under the pretext of breaching N.G.'s confidentiality. It is obviously illogical that if one part of the N.G.'s medical record can be used during the Arbitration process after it is sanitized, then, why the other parts of the same record cannot be sanitized in the same manner and allow Yee to use it to defend himself. There are other physicians and health care providers' prescriptions in N.G.'s medical record that were written similarly to Yee's style of writing, and they were not brought up for charge as "alteration of a medical record." Furthermore, all the available witnesses during the Arbitration process were from the management of the Agency or Pharmacists, no staff employees, or Yee's colleagues (staff Psychiatrists that were working in the same capacity as Yee) were available to testify for Yee, although they were on Yee's witness' list. If one examines the

Arbitration transcript carefully, there are discrepancies between the Testimonies of the Pharmacists, albeit, the Pharmacists tried to coordinate their testimonies so that they would not be blamed for the apparent Trazodone prescription processing error. The only reliable source of evidence is to elicit how a prescription was processed on March 16, 2001, from neutral witnesses that worked in that area and the objective evidence generated by the Pharmacy Computer.

Complaints and Claims are timely filed.

A. Yee initiated the Complaint against Teague on March 24, 2003. Teague's False Memorandum was written on March 29, 2001, and the Labor Arbitration Due process violation occurred in 2002, the time lapse is less than two years in both said cases .

APPENDIX E

Mark L. Williams, Attorney for Complainant (Yee),

SBN 21562950, 3116 W. 5th Street, Suite 106, Fort Worth,

TX 76107, Office: 817.877.0455, 817.334.0690 Fax,

E-mail: mlwlabor@aol.com, has submitted a Brief to

reopen appeal with supporting documents, and the Office of

Federal Operation has granted the request. A letter was

received stating this fact. SEE **APPENDIX C:**

EQUAL EMPLOYMENT OPPORTUNITY

COMMISSION, OFFICE OF FEDERAL OPERATIONS,

P.O. BOX 19848,

WASHINGTON, D.C. 20036.

DATE: JAN 30, 2006

REQUEST FOR RECONSIDERATION

RE: Justice, Dept of, Docket #: 05A60361, Assoc #:

01a40766.

Agency #1: P990020, Filed: 121905

APPENDIX F

Memorandum For Disciplinary file presented as Joint Exhibit J-4 during the Labor Arbitration in 2002 is very lengthy and consist of forms and the computer electronic records, labels, and other format that cannot be typed and reproduced here. If it is requested, copies will be made available in photocopied paper format.

APPENDIX G

February 26, 1998

Office of General Counsel/ EEO

320 1st St. N.W. Room 700

Washington, DC.

MEMORANDUM FOR: Jacqueline M. Morgan

FROM: John Hartford

RE: Jordan Yee, M.D.

I have been on leave for the past few weeks and this was in my box when I returned. I understand that the local union Vice President, Torii Dawdy put it there. Dr. Yee had

contacted the Union, however, once Dr. Yee explained that he had filed an EEO complaint Mr. Dawdy passed it on.

I have not seen or spoken to Dr. Yee in months. Rumor had it that he was walked out. I have not contacted him on this matter because I did not want to appear to be soliciting business.

If I need to do anything let me know. I will be leaving this Sunday for approximately 10 days. Therefore, I am also enclosing my monthly form.

APPENDIX H

1. August 26, 1997, Daniel J. Barbaro, M.D. wrote to the Agency stating that Yee has a diagnosis of chronic hepatitis and had multiple increase in blood pressure. Yee was given Maxzide to lower his blood pressure. Yee was accused of "sleeping on the Job," when Yee was ill with increased blood pressure to 184/110. Yee was interrogated by the Agency manager for half an hour before Yee was allowed to seek medical help on that day. Yee suffered neurological

injury from the action of the agency. Yee had similar episodes before and was able to control his blood pressure with extra medication. No neurological injury occurred before.

2. September 4, 1997, Daniel J. Barbaro, M.D. wrote to the Agency stating that Yee should go on extended sick leave, and should only go back to work when cleared by all physicians.

3. September 8, 1997, Jung T. Chang, M.D. Ph.D., neurologist, wrote to the Agency stating that Yee should continue his sick leave.

4. September 24, 1997, Jung T. Chang, M.D. Ph.D., neurologist, wrote that Yee has weakness of his right hand.

5. On February 4, 1998, Desmond B. Corbett, M.D. PA. wrote to extend Yee's sick leave stating that Yee is under experimental protocol treatment, and currently continues to have some problems with weakness, easy fatigability. Yee has underlying hypertension and has some recent

neurological symptoms that have required evaluation by a neurologist and may have represented a slight stroke.

6. On May 7, 1998, Desmond B. Corbett, M.D. PA. wrote to extend Yee's sick leave stating that Yee might involve in experimental treatment for the next 12 to 18 months. Yee was currently treated for depression and hypertension by Dr. Cheng.

7. On July 13, 1998, Desmond B. Corbett, M.D. PA. wrote to extend Yee's sick leave stating that Yee might involve in more Hepatitis B treatment.

8. From September 8, 1997 to June 15, 1998, Jung T. Chang, M.D. Ph.D., neurologist, wrote to the Agency to detail Yee's medical condition, which consist of short term memory problems, difficulty in concentration, condition exacerbated by chronic active hepatitis B, and complicated migraine headaches.

9. On March 29, 1999, Desmond B. Corbett, M.D. PA. wrote to recommend Yee to start working half a day in May 1999.

10. Robert P. Odgers, PhD, ABPP, Clinical Neuropsychologist, performed extensive Neuropsychological Evaluation on Yee (8/28/98, 9/11/98. and 9/14/98) with diagnostic impression of Major Depression, Severe, Single Episode. Cognitive Disorder, Possibly Secondary to Above, But with History of Vascular Event.

11. Robert P. Odgers, PhD, ABPP, Clinical Neuropsychologist, performed extensive Neuropsychological Evaluation on Yee again on June 24, 1999 and recommended that Yee has recovered from his cognitive impairment and can function fully as a psychiatrist.

APPENDIX I

February 24, 2006

To: Donnie Boiles

Equal Employment Opportunity Counselor

Bureaus of Prisons

Grand Prairie, TX

From: Jordan Yee, M.D.

Staff Psychiatrist

Re: Impropriety at the Arbitration for

Jordan Yee's one day suspension for

allegedly altering a Trazodone prescription

after it was processed by the pharmacy at FMC

Carswell

1. Jordan Yee came to realize that William Pederson, M.D., Yee's former Supervisor (Chief of Psychiatry) was not provided, by the Management the electronic record of the alleged Trazodone prescription at question during the Arbitration, FMCS CASE NO. 02-00289.

2. Jordan Yee discussed the electronic record of the Trazodone prescription with Dr. Pederson and concluded that Jordan Yee was innocent of the said charge "Altering the Trazodone prescription after it was processed by the Pharmacy."

3. According to Title 29 CFR, Chapter XIV, part 1614.105 (2), Jordan Yee can file an EEO Complaint at the time, when new knowledge of discrimination was discovered.

4. Warden Lucy Mallishan suppressed availability of Witnesses, Records, and manipulated the witness to railroad Jordan Yee into the disciplinary action as recorded in the Transcript of Arbitration, FMCS CASE NO. 02-00289.

5. The only Union witness allowed was a Nurse Manager, Barbara Jenkins, RN. Non-management staff members, such as, Judith Cherry, M.D. Staff Psychiatrist, Carolyn Jackson, R.N. and Renee McComas, R.N. were not made available to Dr. Yee's defense.

6. Jordan Yee is filing an EEO Complaint against Warden Lucy Mallishan for "Violating the Fourteenth Amendment, Due Process Clause" during the said Arbitration. Warden

Mallishan prejudiced against Jordan Yee's case by withholding necessary and relevant information to Dr. Pederson, thus rendering Dr. Pederson's testimony unfavorable to Jordan Yee's case.

7. Jordan Yee and Dr. Pederson are in the process of drafting a letter to Mr. Boiles. See the attachments which will explain the fact that Dr. Yee is innocent beyond a shadow of a doubt.

Jordan Yee, M.D.

Staff Psychiatrist.

William Pederson, M.D.
2601 Boyd Dr.
Fort Worth, TX 76109
Phone: 817.782.4261 (Office)
February 21, 2006

Donnie Boiles
Equal Employment Opportunity Counselor
Bureaus of Prisons
Grand Prairie, TX
Phone: 972.352.4660

Dear Mr. Boiles:

I was involved in Jordan Yee, M.D.'s Union Arbitration to determine the disciplinary action of one-day suspension stemming from an incident of altering a Trazodone prescription after it is processed by the Pharmacy at Federal Bureau of Prisons, Federal Medical Center, Carswell. Dr. Yee has shown me the investigative documents on this incident which I have not examined before. I come to the conclusion that Dr. Yee is innocent of the alleged charge of altering the Trazodone prescription after it was processed by the Pharmacy. I am presenting the absolute prove of Dr. Yee's innocent on the instant charge that Dr. Yee did not alter the Trazodone prescription from 100mg to 150mg. on the Order Set C as alleged by James Teague, RPH. as the followings:

1. Joint Exhibit (J-4) attachment #8 shows 10 prescriptions, the last prescription is the Tylenol 90-days prescription.
2. J-4, attachment #3 shows the computer record of all the prescriptions processed by the pharmacy on 03/16/2001. It is in ascending order, that is, the top label is the latest date. You can see the last prescription processed by the pharmacy is the Tylenol 90-day prescription before it goes to 03/20/20001.
3. The J-4, attachment #4, shows the Trazodone prescription that Dr. Yee wrote, and if it was processed, then, there must be a computer label generated for it right after the Tylenol 90-days prescription, because the Order set C follows the Order set B. Since there is no more prescription processed after the Tylenol 90-day prescription, then, James Teague never processed the Trazodone

prescription in Order set C, and Dr. Yee is innocent of the false charge of altering the Trazodone 100mg to 150 mg after James Teague, RPH processed it.

I further declare under the penalty of perjury that the foregoing statements with relevant attachments from the Union and Management of FMC Carswell's joint exhibit, J-4, as presented during the Arbitration FMCS Case No. 02-00289 are true and correct.

William Pederson, M.D.

Pursuant to 28 U.S.C. Section 1746